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APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is only binding on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1700-14T1

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JAMES L. ROGERS, JR.,

Defendant-Appellant.

Argued October 6, 2016 – Decided October 25, 2016

Before Judges Leone and Vernoia.

On appeal from Superior Court of New Jersey,
Law Division, Gloucester County, Municipal
Appeal No. 08-13.

Richard J. Barca argued the cause for
appellant (Post & Schell, P.C., attorneys; Mr.
Barca, on the briefs).

Joseph H. Enos, Jr., Senior Assistant
Prosecutor, argued the cause for respondent
(Sean F. Dalton, Gloucester County Prosecutor,
attorney; Mr. Enos, on the brief).

PER CURIAM

Defendant appeals from a November 3, 2014 Law Division order
"den[ying]" his appeal of his convictions in the Township of
Deptford Municipal Court for driving while intoxicated (DWI),

N.J.S.A. 39:4-50, display of fictitious plates, N.J.S.A. 39:3-33, and refusal of a chemical breath test (refusal), N.J.S.A. 39:4-50.¹ Following our review of the arguments advanced on appeal and in light of the record and applicable law, we vacate defendant's convictions in the Law Division, reinstate his convictions in the municipal court, and remand for the Law Division to conduct a trial de novo.

I.

On December 28, 2008, defendant was issued summonses for ten motor vehicle violations by the Deptford Township Police Department. Defendant was also charged with third-degree resisting arrest, N.J.S.A. 2C:29-2a(2). The criminal charge was subsequently downgraded by the Gloucester County Prosecutor's Office to a disorderly persons offense that was remanded to the Deptford Municipal Court for disposition with the motor vehicle charges.

At the commencement of the trial, defendant's counsel moved for dismissal of the charges claiming the delay in bringing the matter to trial violated defendant's constitutional right to a speedy trial. The municipal court judge made detailed findings of fact concerning the procedural history of the matter, and denied the motion.

¹ Defendant does not appeal his conviction for driving an unregistered vehicle, N.J.S.A. 39:3-4.

During the trial the State presented testimony from two Deptford Township police officers. At the conclusion of the State's case, the court dismissed three of the ten pending motor vehicle charges.

At the close of the trial, the municipal judge made detailed findings of fact based upon the testimony presented. The court determined that defendant was not guilty of the disorderly persons offense, but found him guilty of DWI, refusal, displaying fictitious plates, and driving an unregistered vehicle. The municipal judge also found defendant guilty of the remaining motor vehicle offenses, but "dismiss[ed] [them] by way of merger" with the offenses for which defendant was sentenced. Defendant appealed to the Law Division for a trial de novo.

On October 3, 2014, the Law Division judge heard argument on defendant's appeal. After hearing argument, the judge said,

[L]et me say that, once again, the [c]ourt's – the Appellate Division [and] Supreme Court made it very clear, that where we have factual findings made by the [t]rial [j]udge, who has had an opportunity to observe the witnesses, that we're pretty much bound by that, unless there's something varying.

Which brings us to the legal points that [counsel] made, which don't fall under that restriction. But, before I get there, let me say that I feel that the factual aspect of the case, I find nothing to disagree with or upset what [the municipal court judge] did.

The judge also stated that he disagreed with defense counsel's legal argument that there was insufficient evidence to sustain defendant's conviction on the display of fictitious plates charge.

The judge addressed defendant's motion to dismiss based on speedy trial grounds. He found the case had a "tortured history" and that "major delays . . . [were] occasioned by the defendant."

Based on those findings, the court denied defendant's motion to dismiss on speedy trial grounds and determined there were no reasons "adequate to upset [defendant's] conviction[s]." The court "affirmed" defendant's convictions for DWI, refusal and displaying fictitious plates. This appeal followed.

On appeal, defendant makes the following arguments:

Point I.

The Law Division Committed an Error of Law in Affirming the Conviction for Refusal to Take a Breath Test when the Record Only Reflects the Conclusory Assertion that Officer Bittner Read the "Standard Statement."

Point II.

The Law Division Erred in Finding that the State Proved Beyond a Reasonable Doubt that Defendant was Guilty of DWI.

Point III.

The Law Division Erred in Relying Upon Evidence Outside of the Municipal Record to Convict Defendant of Driving with a Fictitious Tag.

Point IV.

The Law Division Erred in Not Finding that Defendant's Speedy Trial Rights were Violated.

Point V.

The Law Division Erred in Refusing to Make Factual Findings During the De Novo Review of Defendant's Conviction.

II.

An appeal of a municipal court conviction must first be addressed by the Law Division de novo. R. 3:23-8. The role of the Law Division is to make independent findings of facts and conclusions of law based on the record developed in the municipal court. State v. Avena, 281 N.J. Super. 327, 333 (App. Div. 1995) (citing State v. Johnson, 42 N.J. 146, 157 (1964)). The Law Division on an appeal from the municipal court does not search the record for error, or determine if there was sufficient credible evidence to support a conviction. The Law Division is required to decide the case completely anew on the record made before the municipal judge, "giving due, although not necessarily controlling, regard to the opportunity of the" judge to evaluate witness credibility. Johnson, supra, 42 N.J. at 157; see also State v. Cerefice, 335 N.J. Super. 374, 382-83 (App. Div. 2000). The Law Division performs "an independent fact-finding function in respect of defendant's guilt or innocence," State v. Ross, 189

N.J. Super. 67, 75 (App. Div.), certif. denied, 95 N.J. 197 (1983), and must "make his [or her] own findings of fact." Avena, supra, 281 N.J. Super. at 333 (quoting Ross, supra, 189 N.J. Super. at 75).

We review the Law Division's decision employing the "substantial evidence rule." State v. Heine, 424 N.J. Super. 48, 58 (App. Div.), certif. denied, 211 N.J. 608 (2012). "Our review is limited to determining whether there is sufficient credible evidence present in the record to support the findings of the Law Division judge, not the municipal court." State v. Clarksburg Inn, 375 N.J. Super. 624, 639 (App. Div. 2005) (citing Johnson, supra, 42 N.J. at 161-62). We review the Law Division's interpretation of the law de novo without according any special deference to the court's interpretation of "the legal consequences that flow from established facts." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Here, the Law Division judge erred by failing to make any findings of fact. The judge's denial of defendant's motion for dismissal of the charges on speedy trial grounds is unsupported by any findings of fact upon which the denial was based. R. 1:7-4(a). The judge's determinations that defendant was guilty of DWI, refusal, and display of fictitious plates are similarly not based upon any factual findings supporting the convictions. By failing

to make any independent factual findings, the judge did not perform an essential function required in a trial de novo on the record before the municipal court, and also prevented proper appellate review of his legal conclusions.

We are therefore constrained to vacate the Law Division's November 3, 2014 order. Because the Law Division judge who entered the order has retired, we remand the matter for a new trial de novo on the record before the municipal court, which shall be completed within forty-five days of our decision. The Law Division shall make independent findings of fact supporting its decisions on defendant's motion to dismiss and then, if necessary, make independent factual findings supporting its decision of the charges of DWI, refusal, and display of fictitious plates.²

Vacated and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

² We do not express an opinion of the merits of defendant's motion to dismiss or on the disposition of the outstanding charges.